

State of Wisconsin • DEPARTMENT OF REVENUE

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REAL ESTATE TRANSFER NEWS

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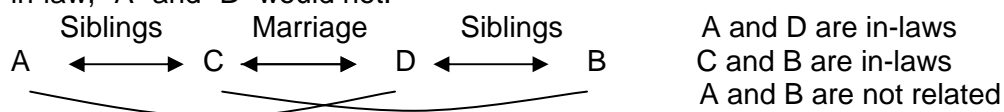
The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Bureau of Utility & Special Taxes
Division of State & Local Finance
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708-8933

The "Guidelines for Real Estate Transfer Fee and Return" (Publication 802, r. 2/97) can be found on the Internet at <http://www.dor.state.wi.us>. then go to "**Local Government Forms & Publications.**"

- 1Q.** Would the following relationship between "A" and "B" qualify for the exemptions 15m and 15s? The sole members of a LLC are "A" and "B". They are also sole partners in a partnership. The partnership wants to convey real property to the LLC. "A" has a sister ("C") who is married to ("D") who is the brother of "B". Since a direct conveyance from the partnership to the LLC would result in a transfer fee being imposed, regardless of the relationship of the partners and members, we are proposing a conveyance from the partnership to the individuals using 15m and then from the individuals to the LLC using 15s. Are "A" and "B" related as required for the exemptions?

- A.** As to the relationship of "A" and "B", they would not qualify under the exemptions. Since "C's" husband "D" is the brother of "B", "A" and "B" are not considered in-laws per Black's Law Dictionary. Brother-in-law is defined as the "brother of one's spouse" therefore, while "A" and "D" would be brother-in-law, "A" and "B" would not.



RETN, October 1997, Question 2 explains what relationships can be used for the exemption 15 series. If "C" and "D" were partners and members with "A" and "B", then the exemptions would apply for each conveyance.

- 2Q.** Whose name should appear as the grantee when a conveyance is made to a trust since Wisconsin statute section 701.05(1) requires the trustee take title?

- A.** The name of the trust should appear on Line 14 and not the trustee. Even though the trustee is named as grantee, the fact remains that the real estate is a trust asset and not a trustee asset. The trustee would sign as agent for the trust on Line 71 and complete the rest of the information for agent - fiduciary. Additionally, for a trust not requiring a tax identification number such as a revocable trust, the social security number of the trustor is required. Thus, when an individual places property into a revocable trust, that person's social security number would be shown on Lines 4 and 17. For a trust that does require a Tax Identification Number (TIN), you must use the trust TIN and not the individual's social security number.

3Q. Would you explain the new exemption s. 77.25(20), Stats. - "Made under 184.15" that was enacted April 20, 1998 under 1997 Assembly Bill 553, 1997 WISCONSIN ACT 140?

A. The bill adopts the Uniform Unincorporated Nonprofit Association Act. The bill defines a nonprofit association as an unincorporated organization consisting of 3 or more "members" joined by mutual consent for a common, nonprofit purpose and permits the nonprofit association, in its own name, to acquire, hold, encumber or transfer real or personal property. Prior to this section, property was held by a fiduciary for the nonprofit association. The exemption allows the fiduciary to convey the vested estate or interest to the nonprofit association in its own name per "**184.15 Transfers by a fiduciary**" without incurring a transfer fee.

4Q. Are expenses such as back taxes and the broker's commission, which are paid for by the buyer on behalf of the seller, included in the value subject to transfer fee?

A. Yes. Whenever a buyer pays any expenses of the seller, including the real estate broker's commission, a transfer fee is imposed on the total amount paid. Section 77.21(3)(a), of the Wisconsin Statutes defines value as the amount of the full actual consideration paid or to be paid including any liens thereon. Any seller expense such as back taxes and broker's commission would be considered a lien on the property. Example: Seller lists property for sale for \$100,000.00 with broker's commission of 7% upon sale. Buyer offers \$93,000.00 and agrees to pay the \$7,000.00 commission directly to broker. The transfer fee is on the full \$100,000.00 since the buyer is paying the seller's broker expense in addition to the \$93,000.00 for the property. (*Related Items - Questions 26 & 27 RETN 2/91*)

5Q. Would a "buyer's broker commission" be included in the value subject to fee?

A. No. Unlike Question 4, when a buyer signs a "buyer's broker agreement" for the broker to locate a property on behalf of the buyer, the commission is not included as a value subject to fee. This commission does not become part of the "purchase price" since it is not consideration paid to or on behalf of the seller.

6Q. I am selling my mobile home on a leased site where it is on a foundation and hooked to water, sewer and other utilities. When I record the deed with the register of deeds transferring title, am I subject to the transfer fee?

A. Yes. Real estate is defined per s. 77.21(1m), Stats. as including improvements on leased land. Even though a mobile home is defined per s. 70.043(1), Stats. as an improvement to real property if connected to utilities, set upon a foundation and "*on land owned by the mobile home owner*", for transfer fee purposes, it is real estate. The property tax laws under Chapter 70, Wisconsin Statutes do not necessarily coincide with the transfer fee law. A transfer fee is not due if the title to the mobile home is filled out and submitted to the Department of Transportation.